

## Department of the Army, DoD

## § 516.55

a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

### § 516.53 News media and other inquiries.

News media inquiries regarding litigation or potential litigation will be referred to the appropriate public affairs office. DA personnel will not comment on any matter presently or potentially in litigation without proper clearance. Local public affairs officers will refer press inquiries to HQDA (SAPA), WASH DC 20310-1500, with appropriate recommendations for review and approval by the Office of the Chief of Public Affairs. All releases of information regarding actual or potential litigation will be coordinated with Litigation Division prior to release.

### STATUS, TRAVEL, AND EXPENSES OF WITNESSES

### § 516.54 Witnesses for the United States.

(a) Status of witness. A military member authorized to appear as a witness for the United States, including those authorized to appear under § 516.55(d), will be placed on temporary duty. If USAR or NG personnel are requested as witnesses for the United States, and if their testimony arises from their active duty service, they should be placed on active duty to testify. The status of a civilian employee will be determined under Federal Personnel Manual 630, subchapter 10. DA personnel who appear as necessary witnesses for a party asserting the government's claim for medical care expenses are witnesses for the United States.

(b) Travel arrangements. Travel arrangements for witnesses for the United States normally are made by DOJ through Litigation Division for other than local travel. Litigation Division will issue instructions for this travel, including fund citation, to the appropriate commander. A U.S. Attorney, or an attorney asserting the government's medical care claim under subpart E, may make arrangements for local travel through the SJA or legal adviser for attendance of a witness who is stationed at an installation within

the same judicial district, or not more than 100 miles from the place where testifying. Other requests, including those under § 516.55(d), will be referred to Litigation Division. The instructions from Litigation Division, or the request from the U.S. Attorney or the attorney asserting the government's claim, will serve as a basis for the issuance of appropriate travel orders by the local commander.

(c) Travel and per diem expenses. The witness' commander or supervisor should ensure the witness has sufficient funds to defray expenses. The SJA or legal adviser will provide assistance.

(1) Where local travel is performed at the request of a U.S. Attorney and the testimony does not involve information acquired in the performance of duties, transportation arrangements and any per diem expenses are the responsibility of the U.S. Attorney.

(2) An attorney asserting the government's medical care or property claim may be required to advance local travel expense money to the witness requested and to include these in recoverable costs where the government's claim is not large enough to justify expenditures of government travel funds.

(3) Other local travel and per diem expense for cases involving Army activities or claims are proper expenses of the command issuing the orders.

(4) Litigation Division will furnish travel expense and per diem funds for other than local travel and will receive reimbursement from DOJ or other government agencies as appropriate.

### § 516.55 Witnesses for a State or private litigant.

(a) *Status of witness.* If authorized to appear as a witness for a state or private litigant, and the testimony to be given relates to information obtained in the performance of official duties, a military member will attend in a permissive TDY status. If authorized to appear as a witness, but the testimony does not relate to information obtained in the performance of official duties, a military member may be granted a pass or permissive TDY under AR 630-5, or be required to take ordinary

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leave. The status of a civilian employee will be determined under 5 CFR Chapter I.

(b) *Travel arrangements.* The requesting party or state agency will make all travel arrangements for attendance of DA personnel authorized to appear as witnesses for a state or private litigant. The local commander may issue appropriate orders when necessary.

(c) *Travel expenses.* The United States may not pay travel, meals, and lodging expenses of the witness, other than normal allowances for subsistence pursuant to the DOD Military Pay and Allowances Entitlements Manual. These expenses are solely a matter between the witness and the party seeking his appearance. Witnesses ordinarily should be advised to require advance payment of such expenses. Military personnel authorized to appear in a pass or permissive TDY status are not entitled to receive witness attendance fees, but may accept travel, meals, and lodging expense money from the requesting litigant. All witness fees tendered the military member, to the extent they exceed such actual expenses of the member, will be remitted to the Treasurer of the United States. A civilian employee authorized to appear in his or her official capacity will accept the authorized witness fees, in addition to the allowance for travel and subsistence, and make disposition of the witness fees as instructed by his or her personnel office.

(d) *Funding by the United States.* Requests for DA personnel to appear at government expense as witnesses in state or local proceedings for a party other than the United States, including cases involving domestic violence or child abuse, will be referred to Litigation Division. Litigation Division may authorize travel and per diem expenses under § 516.54 when the case is one in which the United States has a significant interest.

### § 516.56 Witnesses before foreign tribunals.

(a) *Referral to the SJA.* Requests or subpoenas from a foreign government or tribunal for present DA personnel stationed or employed within that country to be interviewed or to appear as witnesses will be forwarded to the

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SJA of the command exercising general court-martial jurisdiction over the unit to which the individual is assigned, attached, or employed. The SJA will determine the following:

(1) Whether a consideration listed in § 516.47(a)(1) through (a)(3) applies.

(2) Whether the information requested is releasable under the principles established in § 516.43 through § 516.46.

(3) Whether the approval of the American Embassy should be obtained because the person is attached to the Embassy staff or a question of diplomatic immunity may be involved.

(b) *United States has an interest in the litigation.* If the SJA determines that the United States has an interest in the litigation, the commander may authorize the interview or order the individual's attendance in a temporary duty status. The United States will be deemed to have an interest in the litigation if it is bound by treaty or other international agreement to ensure the attendance of such personnel.

(c) *United States has no interest in the litigation.* If the SJA determines that the United States does not have an interest in the litigation, the commander may authorize the interview or the appearance of the witness under the principles established in § 516.47 through § 516.50.

(d) *Witnesses located outside the requester's country.* If the requested witness is stationed in a country other than the requester's, the matter will be referred to Litigation Division.

## Subpart H—Remedies in Procurement Fraud and Corruption

### § 516.57 Purpose.

This subpart delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities (PFI) within DA. It implements DOD Directive 7050.5. (See appendix D to this part.)

### § 516.58 Policies.

(a) Procurement fraud and irregularities will be promptly and thoroughly